

## **APPENDIX E:**

### **SUBDIVISION IMPROVEMENTS GUARANTEES**

#### **Improvements to be Completed Prior to Approval of the Final Plan:**

All public improvements required under these Regulations and the conditions imposed by the BOCC at the time of approval of the subdivision application, shall be completed prior to the approval of the final plat. However, the BOCC, shall at the subdivider's option allow the subdivider to provide or cause to be provided a bond or other reasonable security, in an amount and with surety and conditions satisfactory to the governing body, providing for and securing the construction and installation of the improvements within a period specified by the governing body and expressed in the bonds or other security. The governing body shall reduce bond requirements commensurate with the completion of improvements. The following procedures and requirements shall apply:

#### **A. Improvement Standards:**

The BOCC shall specify the improvements that shall be completed after the final plat is approved. The BOCC shall specify that the improvements must be constructed to standards included in these Regulations and the other standards the BOCC may adopt. Those improvements may include streets, roads, bridges, culverts, curbs, gutters, drainage water systems, sewage systems, sidewalks, walkways, street lights, street signs, road right-of-way clearings, solid waste facilities, park and recreational facilities, utilities and other improvements as required by the BOCC.

#### **B. Time Limits:**

1. All public improvements shall be completed within the time schedule approved by the BOCC and stated in the subdivision improvement agreement between the subdivider and the BOCC. At the discretion of the BOCC, the subdivision improvement agreement may be extended for a specified time.
2. Where no specific time schedule is included in the subdivision improvement agreement, all public improvements shall be completed within twenty-four (24) months from the date of approval of the final plat by the BOCC.

**C. Projected Costs:**

The BOCC shall direct the subdivider to have plans, specifications, and the estimated costs of completing the improvements prepared by a registered professional engineer. The projected improvements cost shall be 125 percent (125%) of the current costs for completing the improvements. The BOCC, at its discretion, may require the submitted plans, specifications and projected costs be reviewed by another registered professional engineer designated by the BOCC. The costs for such review shall be borne by the subdivider.

**D. Improvement Agreement:**

The subdivider shall enter into an improvements agreement with the BOCC. The improvement agreement shall include:

1. A commitment to complete the improvements within the specified time;
2. The projected costs of the improvements as approved by the BOCC;
3. A guarantee acceptable to the BOCC and in a value equal to the approved projected costs of the improvements and;
4. A warranty against defects in the improvements for a period of one year from the date of completion and BOCC's acceptance.

**E. Improvement Guarantee:**

The subdivider shall provide a guarantee that the improvements will be satisfactorily completed and are guaranteed for twelve (12) months. The guarantee shall have a value equal to the projected costs of completing the improvements, as stated in Section D., above. The guarantee shall specify procedures for the BOCC to obtain the funds, should the subdivider fail to satisfactorily complete the improvements. The types of guarantees acceptable to the BOCC are described in Section I., below. The method of guarantee shall be subject to approval of the BOCC.

**F. Inspection and Certification:**

Upon completion of required improvements, the subdivider shall file with the BOCC a statement certifying that:

1. All required improvements are complete;
2. These improvements are in compliance with the minimum standards specified by the BOCC for their construction;

3. The subdivider knows of no defects in these improvements;
4. These improvements are free and clear of any encumbrances or liens;
5. All applicable fees and surcharges have been paid.

The subdivider shall also file with the County copies of final construction plans, road profiles, as-builts, grades and specifications for improvements.

The subdivider will provide for inspection of all required public improvements by a registered professional engineer before final plat approval when installation is a condition of approval or before the BOCC releases the subdivider from the subdivision improvements agreement.

Upon completion of the inspection, the inspecting engineer shall file with the BOCC a statement either certifying that the improvements have been completed in the required manner or listing the defect in those improvements.

Should the subdivider fail to meet the requirements of this section, the BOCC may provide for such inspection and the cost shall be borne by the subdivider.

**G. Reduction and Release of Guarantee:**

Only after the inspecting engineer certifies that improvements are complete and free from defect, and after receipt of the statements detailed above, the BOCC shall release the subdivider from the subdivision improvement agreement.

The BOCC may, upon application by the subdivider, release a portion of the collateral corresponding to the value of the installed improvements.

Upon the certification of completion of all of the required improvements, the County shall retain ten (10) percent of the improvement guarantee for a period of one year as a guarantee against defect.

**H. Failure to Satisfactorily Complete Improvements:**

If the BOCC determines that any improvements are not constructed in compliance with the specifications, it shall furnish the subdivider with a list of specific deficiencies and may withhold collateral sufficient to ensure proper completion. If the BOCC determines that the subdivider will not construct any or all improvements to required specifications, or within the time limits, it may withdraw collateral and use these funds to construct the improvements and correct any deficiencies to meet specifications.

Unused portions of these funds shall be returned to the subdivider or crediting institution.

**I. Acceptable Forms of Improvements Guarantees:**

The subdivider shall provide one or more of the following financial security guarantees in the amount of the projected cost of installing all required improvements plus the estimated cost of inflation over the term of the guarantee as determined by county staff:

**1. Escrow Account:**

The subdivider shall deposit cash, or collateral readily convertible to cash at face value, either with the BOCC or in escrow with a bank. The use of collateral other than cash, and the selection of the bank where the funds are to be deposited must be approved by the BOCC.

Where an escrow account is to be used, the subdivider shall give the BOCC an agreement with the bank guaranteeing the following:

(a) That the funds in the escrow account are to be held in trust until released by the BOCC and may not be used or pledged by the subdivider as security for any other obligation during that period.

(b) That should the subdivider fail to complete the required improvements; the bank shall immediately make the funds in escrow available to the BOCC for completing these improvements.

**2. Letter of Credit:**

Subject to the BOCC approval, the subdivider shall provide the Board of Commissioners with a letter of credit from a bank or other reputable institution or individual certifying the following:

(a) That the creditor guarantees funds in an amount equal to that cost, as approved by the BOCC, of completing all required improvements;

(b) That if the subdivider fails to complete the specified improvements within the required period, the creditor will immediately pay to the BOCC upon presentation of a sight draft without further action, an amount of cash necessary to finance the completion of those improvements, up to the limit of credit stated in the letter;

(c) That this letter of credit may not be withdrawn or reduced in amount, until released by the BOCC.

3. Surety Performance Bond:

The bond shall be executed by a surety company authorized to do business in the State of Montana and acceptable as a surety to the BOCC and countersigned by a Montana agent. The bond shall be in effect until the completed improvements are accepted by the BOCC.

4. Other Acceptable Guarantee(s).

The BOCC at its discretion may accept any other reasonable guarantee not stated herein, to ensure satisfactory completion of the improvements.

**J. Sequential Development:**

Where a subdivision is to be developed in phased portions, the BOCC may, at its discretion, waive the use of a guarantee of the initial portion, provided that the portion contains no more than 25 lots, or fifty percent (50%) of the total number of lots in the proposed subdivision, whichever is less. The BOCC may grant final plat approval to only one portion at a time. The plat approval for each succeeding portion will be contingent upon completion of all improvements in each preceding portion and acceptance of those improvements by the BOCC. Completion of improvements in the final portion of the subdivision must be guaranteed through the use of one of the other methods detailed in this appendix.

**K. Rural Improvement District:**

The BOCC may enter into an agreement with the subdivider, and the owners of the property proposed subdivision if other than the subdivider, that the installation of required improvements will be financed through a special or rural improvement district created pursuant to Title 7, Chapter 12, MCA. This agreement must provide that no lots within the subdivision will be sold, rented or leased, and no contract for the sale of lots executed before the improvement district has been created.

The subdivider, or other owners of the property involved, must also petition the BOCC to create a rural improvement district, which constitutes a waiver by the subdivider or the other owners of the property of the right to protest, or petition against, the creation of the district under either Section 7-12-2109 or Section 7-12-4110, MCA. This waiver must be filed with the County Clerk and Recorder and will be deemed to run with the land.

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